

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	}	
Junk Fax Prevention Act of 2005	}	CG Docket No. 05-338
Rules and Regulations Implementing the	}	
Telephone Consumer Protection Act of 1991	}	CG Docket No. 02-278

**Declaration of Scott Z. Zimmermann in Support of Edward Simon's Comments on  
the Petition for Waiver of the Commission's Rule on Opt-Out Notices on Fax  
Advertisements Filed by the "RadNet Entities"**

1. I am an attorney of law duly licensed by the State Bar of California. I am co-counsel with Payne & Fears LLP representing Edward Simon ("Simon"). I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein. I make this declaration in support of Simon's Comments on the Petition for Waiver of the Commission's Rule on Opt-Out Notices on Fax Advertisements Filed by the "RadNet Entities".

2. Attached hereto as Exhibit A is a true and correct copy of Simon's Complaint filed on September 4, 2014, in the Los Angeles Superior Court. Subsequently Defendants removed the action to the United States District Court for the Central District of California. The action was assigned to Judge Beverly Reid O'Connell and given Case No. 2:14-cv-7997 BRO. Exhibit A is the operative complaint in the action.

3. Attached hereto as Exhibit B is a true and correct copy of the Answer filed by the defendants in the Simon litigation on February 5, 2015, as Dkt. 17.

4. I advised counsel for the defendants in the Simon litigation that the form mentioned on page 3 of the instant Petition was not filled in by Simon or any employee of Simon.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed February 9, 2015, at Santa Monica, California.

  
Scott Z. Zimmermann

**EXHIBIT “A”**

**EXHIBIT “B”**

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Inc.; RadNet, Inc.; Beverly Radiology Medical  
8 Group III; Pronet Imaging Medical Group, Inc.;  
Breastlink Medical Group, Inc.; and Beverly  
9 Radiology Medical Group, Inc.

10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12 **WESTERN DIVISION**  
13

14 EDWARD SIMON, DC, individually  
15 and on behalf of all others similarly  
situated,

16 Plaintiff,

17 vs.

18 RADNET MANAGEMENT, INC., a  
19 California corporation; RADNET,  
INC., a Delaware corporation;  
20 BEVERLY RADIOLOGY  
MEDICAL GROUP III, a California  
21 professional partnership; PRONET  
IMAGING MEDICAL GROUP, INC.,  
22 a California corporation;  
BREASTLINK MEDICAL GROUP,  
23 INC., a California corporation;  
BEVERLY RADIOLOGY MEDICAL  
24 GROUP, INC., a California  
corporation; and DOES 1 through  
25 1,000, inclusive,

26 Defendants.  
27  
28

CASE NO. CV 14-7997 BRO  
(PJWx)

Hon. Beverly Reid O'Connell

**DEFENDANTS' ANSWER TO  
COMPLAINT**

**ANSWER**

Defendants RadNet Management, Inc., RadNet, Inc., Beverly Radiology Medical Group III, Pronet Imaging Medical Group, Inc. Breastlink Medical Group, Inc. and Beverly Radiology Medical Group, Inc. answer the complaint filed by Plaintiff Edward Simon, D.C. as follows:

**ANSWER TO INTRODUCTORY ALLEGATIONS**

1. In answering this paragraph, Defendants allege that it contains legal conclusions to which no factual response is required. To the extent a response is required, Defendants deny the allegations.

2. In answering this paragraph, Defendants admit Plaintiff asserts legal claims but deny the remaining allegations.

3. In answering this Paragraph, Defendants admit this Court has subject matter jurisdiction and that venue is proper in this Court. Defendants have no information as to whether Plaintiff has standing to assert the claims he purports to assert, and on that basis, deny the allegations in this paragraph regarding standing.

4. In answering this paragraph, Defendants admit that the Court has subject matter jurisdiction and personal jurisdiction over Defendants. Except as admitted, Defendants deny the remaining allegation in this paragraph.

**ANSWER TO ALLEGATIONS REGARDING THE PARTIES**

5. In answering this paragraph, Defendants admit that Plaintiff purports to be a chiropractor. Except as admitted, Defendants deny the remaining allegations in this paragraph.

6. In answering this paragraph, Defendants admit the allegations.

7. In answering this paragraph, Defendants admit that defendant RadNet, Inc. is a Delaware corporation and that its principal place of business is within Los Angeles County. Defendants further admit that the shares of defendant RadNet, Inc. are publicly traded on the NASDAQ. Except as admitted, Defendants deny the remaining allegations in this paragraph.

1 8. In answering this paragraph, Defendants admit the allegations.

2 9. In answering this paragraph, Defendants admit the allegations.

3 10. In answering this paragraph, Defendants admit the allegations.

4 11. In answering this paragraph, Defendants admit the allegations.

5 12. In answering this paragraph, Defendants allege that they lack knowledge  
6 and information sufficient to admit or deny the allegations and on that basis deny.

7 13. In answering this paragraph, Defendants allege that it sets forth  
8 definitions as used in the complaint and therefore, no factual response is required. To  
9 the extent a response is required, Defendants deny the allegations in this paragraph.

10 **ANSWER TO ALLEGATIONS REGARDING THE JFPA**

11 14. In answering this paragraph, Defendants allege that it contains legal  
12 conclusions to which no factual response is required. To the extent a response is  
13 required, Defendants deny the allegations in this paragraph.

14 15. In answering this paragraph, including the footnotes, Defendants allege  
15 that it contains legal conclusions to which no factual response is required. To the  
16 extent a response is required, Defendants deny the allegations in this paragraph.

17 **ANSWER TO ALLEGATIONS REGARDING DEFENDANTS' PURPORTED**  
18 **FAX PROGRAM**

19 16. In answering this paragraph, Defendants deny the allegations.

20 17. In answering this paragraph, Defendants admit the allegations.

21 18. In answering this paragraph, Defendants deny the allegations.

22 19. In answering this paragraph, Defendants admit Exhibit 1 to the complaint  
23 does not contain opt-out language. Except as admitted, Defendants deny the  
24 remaining allegations in this paragraph.

25 **ANSWER TO CLASS ACTION ALLEGATIONS**

26 20. In answering this paragraph, Defendants deny the allegations.  
27  
28

21. In answering this paragraph, Defendants admit that Plaintiff attempts to allege a class definition. Defendants deny that the definition is proper or accurate, or that a class action can be maintained based on the definition alleged by Plaintiff.

22. In answering this paragraph, Defendants lack sufficient information to admit or deny and on that basis deny.

23. In answering this paragraph, Defendants deny the allegations.

24. In answering this paragraph, Defendants deny the allegations.

25. In answering this paragraph, Defendants deny the allegations.

26. In answering this paragraph, Defendants deny the allegations.

**ANSWER TO CLAIM FOR VIOLATIONS OF THE JFPA AND FCC  
REGULATIONS**

27. In answering this paragraph, Defendants incorporate by reference the allegations in paragraphs 1 through 26 of this answer.

28. In answering this paragraph, Defendants deny the allegations.

29. In answering this paragraph, Defendants allege that it contains legal conclusions to which no factual response is required. To the extent a response is required, Defendants deny the allegations in this paragraph.

30. In answering this paragraph, Defendants deny the allegations.

31. In answering this paragraph, Defendants deny the allegations.

**AFFIRMATIVE DEFENSES**

Without assuming the burden of proof on any issue, Defendants allege that Plaintiff's complaint and the claim for relief alleged therein are subject to the following affirmative defenses:

**First Affirmative Defense**

**(Consent)**

For their first affirmative defense, Defendants allege that recovery by Plaintiff and/or members of the alleged class is barred by the doctrine of consent.

**Second Affirmative Defense**



1 **(Established Business Relationship)**

2 For their second affirmative defense, Defendants allege that any person  
3 receiving a fax from any of them had an established business relationship and  
4 voluntarily asked and/or consented to receive such communications.

5 **Third Affirmative Defense**

6 **(Arbitration)**

7 For their third affirmative defense, Defendants allege that certain members  
8 of the alleged class are subject to arbitration provisions with class-action waivers.

9 **Fourth Affirmative Defense**

10 **(Primary Jurisdiction)**

11 For their fourth affirmative defense, Defendants allege that this case should  
12 be stayed or dismissed pursuant to the Federal Communications Commission's  
13 primary jurisdiction over the issues in the case.

14 **Fifth Affirmative Defense**

15 **(Adequate Remedy at Law)**

16 For their fifth affirmative defense, Defendants allege that injunctive relief  
17 is unavailable because Plaintiff and the alleged class have an adequate remedy at  
18 law.

19 **Sixth Affirmative Defense**

20 **(Good Faith)**

21 For their sixth affirmative defense, Defendants allege that they had a good-  
22 faith basis to believe that Plaintiff and the members of the alleged class had  
23 provided consent to receive faxes.

24 **Seventh Affirmative Defense**

25 **(No Agency Relationship)**

26 For their seventh affirmative defense, Defendants allege that any fax  
27 transmissions made to Plaintiff or the punitive class were made by third parties  
28 and were not subject to express or implied authorization by Defendants, and that

1 Defendants did not ratify the sending of the faxes in violation of the JFPA or FCC  
2 regulations.

3 **Eighth Affirmative Defense**

4 **(Due Process)**

5 For their eighth affirmative defense, Defendants allege that the JFPA and  
6 the FCC interpretations of the JFPA violate the due process clause of the United  
7 States Constitution because they purport to subject Defendants to unreasonable  
8 and punitive monetary penalties that far exceed the damages incurred by Plaintiff  
9 and/or the alleged class.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Defendants deny all allegations in Plaintiff's prayer for  
12 relief (paragraphs 1 through 8) and pray for relief as follows:

- 13 1. That Plaintiff shall take nothing by way of his complaint;  
14 2. For a judgment of dismissal with prejudice;  
15 3. For costs of suit; and  
16 4. For any other relief the Court deems just.

17 Respectfully submitted,

18 Dated: February \_\_, 2015

**KATTEN MUCHIN ROSENMAN LLP**

19  
20 By: /s/ Stuart M. Richter  
Stuart M. Richter

21 Attorneys for Defendants RADNET  
22 MANAGEMENT, INC.; RADNET, INC.;  
23 BEVERLY RADIOLOGY MEDICAL  
24 GROUP III; PRONET IMAGING  
25 MEDICAL GROUP, INC.; BREASTLINK  
26 MEDICAL GROUP, INC.; and BEVERLY  
27 RADIOLOGY MEDICAL GROUP, INC.  
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